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Jefferson L. Patrick

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EXAMINER

OLSON, MARGARET LINNEA

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/826,763	Applicant(s) PATRICK, JEFFERSON L.	
	Examiner MARGARET L. OLSON	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-14 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-14 and 16-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Shumate et al. (US 5,544,798). Shumate discloses an accessory rack 10 with a front platform site near 17 generally extending across the width of a vehicle and a rear platform site at 17' generally extending across the rear of a vehicle, with a front assembly having an elongated front bottom base member 17 attachable across the width of the front platform site and a rear assembly having an elongated rear bottom base member 17' attachable across the width of the rear platform site. A single front upright post 16 is connected at a lower end to the center of the front bottom base member 17 so it is generally centered with respect to the vehicle, and an elongated boat-receiving cross-member 14 is connected at the center thereof to an upper end of the single front upright post, and the elongated front boat receiving cross member is generally parallel to the elongated bottom base member (figures 1-3). A single rear upright post 16' is connected at a lower end to the center of the rear bottom base member 17' so it is generally centered with respect to the vehicle, and an elongated

Art Unit: 3782

boat-receiving cross-member 14' is connected at the center thereof to an upper end of the single rear upright post 16', and the elongated front boat receiving cross member is generally parallel to the elongated bottom base member (figures 1-3). A single elongated upper beam member 13 extends between the front and rear boat-receiving cross members and is connected to the centers of the front and rear boat-receiving cross members, so that the front and rear upright posts and the upper beam members are centered over respective portions of the vehicle (figures 1-3).

With respect to claim 22, use of the rack of Shumate discloses this method.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 9-15, 17-20, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074).

Armstrong discloses an accessory rack that may support small boats on a transporting vehicle with a front platform site extending generally across the width of a front of the vehicle and a rear platform site extending generally across a width of a rear of the vehicle (figure 2, rear on left, front on right). The accessory rack sites have elongated bottom base members 54 attachable across a width of the platform site and a single upright post connected at a lower end to the center of the bottom base members such

Art Unit: 3782

that the upright post is generally centered with respect to the width of the vehicle (figure 3). An elongated boat receiving member 24 is connected at the center of the upper ends of the upright posts and is generally parallel to the elongated bottom base members 54 in both the front and rear assemblies. Armstrong does not disclose a single elongated upper beam member extending between the front boat-receiving cross-member and the rear boat-receiving cross member. Oliver teaches a single elongated upper beam member 26 extending between a center of a front boat receiving cross member 28 and a center of the rear boat receiving cross member 25 so that it is generally centered over a vehicle. It would have been obvious to one of ordinary skill in the art at the time of invention to include a single elongated upper beam between the front and rear assemblies of Armstrong, in order to give strength to the accessory rack when it is in a working position (figure 2).

With respect to claim 2, the primary reference Armstrong discloses that the front and rear upright posts 18/22 each have a lower upright post portion 22 and an upper upright post portion 18. The lower upright post portions 22 are attached at the centers of the elongated bottom base members 54. The upper upright post portions are attached to the centers of the boat receiving cross members 24. The lower and upper upright post positions are configured to be removably and adjustably engageable with each other at 58 (figure 2) so that the boat receiving cross members can be locked at a selected height over the vehicle (figure 2).

With respect to claim 3, the primary reference Armstrong discloses that the boat receiving cross members have an upturned arm 20 at each end (figure 3).

Art Unit: 3782

With respect to claim 4, the primary reference Armstrong discloses that the lower and upper post portions are constructed of rectangular metal tubing (column 3, lines 32-36) and provided with a series of alignable, vertically spaced apart holes 28 to allow a locking member 36 to be inserted through the lower post portions and upper post portion, locking the boat-receiving cross-member at a selected height.

With respect to claim 9, Armstrong discloses each boat-receiving cross member has an elongated middle portion 24 generally parallel to the bottom base member 54 and connected at the center to the upper end of the upper post portion. At opposed ends of the elongated middle portions are boat-receiving end portions 20 which are configured to be removably and adjustably engaged, and lockable with a respective end of the middle portion to provide the cross member with a selected width. Armstrong does not disclose that the middle portion of the boat-receiving cross member has a stub portion. Oliver teaches an accessory rack for carrying a boat on a vehicle with two boat receiving cross members 28 and 29 connected with a central upper beam member 26. Stub portions 44/45 are attached to the center of the middle portions of the boat receiving cross members and face the opposite assembly to removably and slidably receive and lock the upper beam member 26. Upper beam members and stub portions are adaptable so that the user may select a length of rack for a specific vehicle (column 2, line 63- column 3, line 8). It would have been obvious to one of ordinary skill in the art at the time of invention to use stub portions on the boat-receiving cross member to lock a single central upper beam member of a selected length to the accessory rack of

Art Unit: 3782

Armstrong, in order to make the accessory rack adjustable in length and allow it to be easily disassembled and stored.

With respect to claim 10, the middle portion of the boat receiving cross member of Armstrong may be about 2 feet in length, and extend about a foot on either side of the centrally located upper post portion. Armstrong discloses the claimed invention except for the specific length of the middle portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the middle portion about 2 feet in length, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 11, the lower upright post portion of Armstrong may be about one-half the height of the front and rear upright post portions. Armstrong discloses the claimed invention except for the length of the upright post portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the lower upright post portion about one-half the height of the front and rear upright post portions in height, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 12, the upper post portion of Armstrong may be adjusted and locked within the lower post portion at a height so that the top of the upper post portion and elongated middle portion is about 3 feet over the vehicle. Armstrong discloses the claimed invention except for the possible height of the upright post

Art Unit: 3782

portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust and lock the upper post portion within the lower post portion at a height so that the top of the upper post portion and elongated middle portion is about 3 feet over the vehicle, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 13, the front bottom member of Armstrong may be about 33 inches in length and the rear bottom member of Armstrong may be about 43 inches in length. Armstrong discloses the claimed invention except for the specific lengths of the bottom members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the front bottom member of Armstrong about 33 inches in length and the rear bottom member of Armstrong about 43 inches in length, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 14, the upper post portion of Armstrong may be adjusted and locked within the lower post portion at a height so that the top of the upper post portion is about 3 feet above a said front bottom base member and a said rear bottom base member. Armstrong discloses the claimed invention except for the possible height of the upright post portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust and lock the upper post portion within the lower post portion at a height so that the top of the upper post portion is about

Art Unit: 3782

about 3 feet above a said front bottom base member and a said rear bottom base member, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 17, Armstrong discloses an accessory rack for carrying a boat or other elongated objects lengthwise over the middle portion of a vehicle. Front and rear end assemblies 10 are mounted to front and rear vehicle cargo racks (front and rear sections of truck cargo areas, near front and rear 56 in figure 2) with means for removably mounting and front and rear assemblies (bolts near 54, figure 3). Single, adjustable in height vertical support means 18/22 are attached to the mounting means so that the vertical support means are generally centered widthwise with respect to the cargo rack, and thereby over a middle of the respective front or rear of the vehicle (figure 3). Elongated horizontal support means 24 attached at a center thereof to the vertical support means are oriented to extend widthwise over a respective front or rear of said vehicle for receiving a boat or other objects (figure 3). A boat or other elongate objects are supported lengthwise over a middle of the vehicle by the vertical support means. Armstrong does not disclose a connection means connected between the front end assembly and the rear end assembly. Oliver teaches a single elongated upper beam member 26 extending between a center of the front end assembly 28 and a center of the rear end assembly 25 so that it is generally centered over a vehicle. It would have been obvious to one of ordinary skill in the art at the time of invention to

Art Unit: 3782

include a connection means between the front and rear end assemblies of Armstrong, in order to give strength to the accessory rack when it is in a working position (figure 2).

With respect to claim 18, the primary reference Armstrong discloses that the front and rear vertical supports 18/22 each have a first vertical support portion means 22 and a second vertical support portion means 18. The first vertical support portion means 22 are attached at the centers of the mounting means 54. The first and second vertical support portion means are configured to be lockably, removably and adjustably engageable with each other at 58 (figure 2) so that the boat receiving cross members can be locked at a selected height over the vehicle (figure 2).

With respect to claim 19, the primary reference Armstrong discloses that the elongated horizontal support means further has an elongated middle portion support means 24 having opposed ends and are attached at the center to the upper end of the second vertical support portion means for supporting a boat or other elongate objects. Two end portion means 20 are removably, lockably, and adjustably engage the opposed ends of the middle portion support means for locking the horizontal support means at a selected width and for being removable.

With respect to claim 20, Armstrong does not disclose a single short connection means at the center of the each elongated middle portion support means. Oliver teaches an accessory rack for carrying a boat on a vehicle with two elongated middle portion support means 28 and 25 connected with a connection means 26. Short connection means 44/45 are attached to the center of the elongated middle portion support means and face the opposite middle support means to removably and slidably

Art Unit: 3782

receive and lock the elongated connection means 26 between them. It would have been obvious to one of ordinary skill in the art at the time of invention to use short connection means on the middle portion support means to lock a single connection means to the accessory rack of Armstrong, in order to make the accessory rack adjustable in length and allow it to be easily disassembled and stored.

With respect to claim 22, use of the structure disclosed by Armstrong as modified by Oliver discloses this method.

With respect to claim 23, use of the structure disclosed by Armstrong as modified by Oliver discloses this method.

With respect to claim 24, use of the structure disclosed by Armstrong as modified by Oliver discloses this method.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), and further in view of Toivola (US 6, 126, 052). Armstrong as modified by Oliver discloses the structure of claim 4, but does not disclose that the transporting vehicle is an ATV. Toivola teaches a vehicle-carried accessory rack with front and rear platform sites, front and rear bottom base members 30, front and rear upright post portions 40, and connected front and rear boat receiving cross members 50. The accessory rack of Toivola may be carried on an ATV (figure 1). It would have been obvious to one of ordinary skill in the art at the time of invention to carry the accessory rack of Armstrong as modified on an ATV, to allow the boat to be carried where only an ATV may travel.

Art Unit: 3782

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), and further in view of Toivola (US 6,126,052) as applied in claim 5 above, and further in view of Muzzi et al. (US 5,662,451). Armstrong as modified above discloses that the front and rear bottom base members 54 extend across a width of the attachment site, but does not disclose U-bolts connecting the structure to the platforms of a vehicle. Muzzi et al. teaches a carrying rack structure with a vertical member attached to the front and back rack of an ATV (figure 1) with U-bolts. It would have been obvious to one of ordinary skill in the art to use U-bolts to connect the modified carrying rack to the platforms of an ATV, as they are the conventional fasteners for such a purpose (Muzzi et al.; column 5, lines 18-35).

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), and further in view of Whiting (US 4,630,990). Armstrong as modified by Oliver discloses the structure of claim 9, but does not disclose gear attachments attached to the rack with an opening for a tie-down. Whiting discloses an accessory rack with gear attachments 103/115 having openings for receiving tie-downs 109/131, and attached to the rack adjacent the center of the elongated middle portion (figure 1, figure 4, figure 5). It would have been obvious to one of ordinary skill in the art at the time of invention to include gear attachments for tie-downs on the rack of Armstrong as modified, in order to securely mount cargo to the accessory rack.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 6,517,134) in view of Oliver (US 3,819,074), and further in view of

Art Unit: 3782

Toivola (US 6,126,052) and Vieira et al (US 5,560,666). Armstrong as modified discloses the structure of claim 20, and strengthening means that may be used between the elongated middle support means and the vertical support means (figure 5), but does not disclose strengthening means between a mounting means and vertical support means or an elongated middle support means and short connection means. Toivola teaches an accessory rack with strengthening means 42 mounted between vertical support means 40 and short connection means 20. It would have been obvious to one of ordinary skill in the art to put strengthening means between the vertical support means and the short connection means on the accessory rack of Armstrong as modified, in order to make the connection between the rack elements stronger. Armstrong as modified by Oliver and Toivola does not teach strengthening means between the vertical support means and the mounting means. Vieira et al. teach an accessory rack with a strengthening means 50 between the vertical support means 42 and the mounting means 32. It would have been obvious to one of ordinary skill in the art at the time of invention to put strengthening means between the vertical support means and mounting means on the accessory rack of Armstrong as modified, in order to make the connection between the rack elements stronger.

Response to Arguments

9. Applicant's arguments filed 6/10/08 have been fully considered but they are not persuasive.

Art Unit: 3782

With respect to the 102 rejections, Applicant argues that the truck bed of Shumate can not be considered a platform, since it is not "raised above the level of the surrounding area". While the truck bed may be lower than the truck's sides, the truck bed is raised above the level of the surrounding area, since it is above the ground that the truck sits upon. The presence of walls on the truck bed does not impact the identification of a truck bed as a platform, or the ability of a truck bed to encompass both front and rear platform sites.

Applicant further argues that Shumate does not disclose that the pickup truck bed's platform site does not extend "generally across a width of a front of said vehicle", as required in claim 1. Shumate does disclose a front platform site extending across a width of the front of the vehicle. The front platform site of the Shumate reference has a dimension that extends over a width of the vehicle, at the front of the vehicle. The relative width of the truck bed with respect to the vehicle cab is immaterial, and does not impact the claim language or the suitability of the Shumate reference.

Applicant further argues that Shumate does not teach a base member attachable to the platform sites of the front and rear assemblies. Not only are the base members of the Shumate reference already attached to their platform sites by stabilizing straps (column 2, lines 1-6), the claim only posits that the base member be attachable to the platform sites: capable of being attached. The base member 17 of Shumate is capable of being attached to the platform sites at the front and rear of the vehicle, not only because they are already attached to the front and rear sites, but because there is

Art Unit: 3782

nothing that prevents them from being attached in that way or another way of being attached to the front and rear platform sites of the vehicle.

Applicant further argues that the vertical posts of Shumate are not mounted to the vehicle. The vertical posts of Shumate are mounted to the vehicle by a strap, as the applicant himself later describes (column 2, lines 1-6).

Applicant further argues that the front vertical support of Shumate is not mounted over "a middle of a front of said vehicle". The front vertical support of Shumate is mounted over a middle of a front of the vehicle. The American Heritage Dictionary defines the noun front to mean, variously,

1. The forward part or surface, as of a building.
2. The area, location, or position directly before or ahead. (front.

Dictionary.com. *The American Heritage® Dictionary of the English Language*,

Fourth Edition. Houghton Mifflin Company, 2004. (accessed: August 22, 2008).)

The front vertical support of Shumate is mounted in a part foreword of the rear vertical support of Shumate, directly ahead and before the rear vertical support; therefore it is mounted in the front of the vehicle.

Applicant further argues that there is no teaching in Shumate that the front upright post is generally centered with respect to the vehicle. Not only is the post perfectly capable of being generally centered in the vehicle by the adjustment of mounting straps which fix the posts via their bases to their platform sites, as the applicant acknowledges, Shumate's figure 1 shows the upright posts to be generally

Art Unit: 3782

centered in the vehicle, with their upper beam members centered over respective portions of the vehicle.

Shumate discloses each and every aspect of the indicated claims.

With respect to the 103 rejections, Applicants argue that there is no motivation to combine Oliver and Armstrong, since the given motivation for the combination (*i.e.*, since the central bar as taught by Oliver strengthens apparatus of Armstrong) is “nothing more than a speculative statement”. Armstrong and Oliver share a very similar structure, with horizontal beams centered over vertical posts that rest on vehicles to transport large equipment. The main difference between the two references is the single, elongated upper beam between the front and rear assemblies of Oliver, which is used to strengthen the assembly. The combination of any two references, without physical manipulation of devices to test their real-world results, is inherently speculative, and in no way deems the obvious result of that speculative combination illegitimate for the basis of a 103 rejection. Applicant further argues that the only reason to combine Armstrong and Oliver is in hindsight of the invention in question. However, since the Oliver reference teaches the advantage of the central bar between two horizontal beams over two vertical posts mounted on a vehicle in supporting large objects, hindsight is entirely unnecessary for the 103 rejection in this case.

Applicant further argues that Armstrong is strong enough without the center bar taught by Oliver. An advantage of strength is still an advantage, even though the device

Art Unit: 3782

of Armstrong is strong enough for some tasks without the central bar: A center bar would make it stronger, for carrying tasks requiring more support.

Applicant further argues that the combination of the center bar with Armstrong renders the folding ability of Armstrong impossible, which is not true. The center elongated beam 26 as taught by Oliver is removeable from the rack of Oliver (figure 5, column 2, lines 39-46). When combined with the rack of Armstrong, it could be removed from the rack to allow the vertical posts of Armstrong to be folded down. Armstrong would remain fully operation with the addition of a central beam as taught by Oliver.

Applicant further argues that a central beam that added strength to the device of Armstrong would change it's principle of operation, since the support strength "is derived form brackets attached to walls of a truck bed". The brackets of Armstrong are actually attached to the floor of the truck bed, and are not shown at any point contacting the walls of the truck bed (figure 3). Furthermore, adding a central bar to the device of Armstrong would not remove the physical need for brackets connected to the truck bed to support the device, it would merely strengthen other portions of the connected assembly. There would be no change in the method of operation of the device of Armstrong with the addition of the central bar of Oliver.

Applicant further argues that Oliver only teaches a single stub shaft. Applicant is wrong. As cited in the 103 rejection of claim 9 on 3/10/08, Oliver teaches two stub shafts, 44 and 45. Applicant argues that stub 44 is a "sleeve", but the mere

Art Unit: 3782

identification of the stub 44 as a sleeve does not in any way change the object's capabilities, properties, or use as a stub.

Applicant further argues that since the racks of Armstrong cannot be adjusted, the combination with the adjustable rack of Oliver is unwarranted. Since Applicant previously argued that the combination of Armstrong with Oliver is inappropriate because Armstrong can be adjusted and Oliver would, by addition, destroy that function, Examiner is confused to the actual position of the Applicant on how the devices of Armstrong and Oliver function. Regardless, Armstrong is adjustable, since it may be raised, lowered, bent down, and the bolts holding it the truck bed (figure 3) may be removed and the device repositioned in trucks of various sizes, and the adjustable nature of the Oliver rack only renders it more obviously combined with Armstrong.

Applicant further argues that the bolts attaching the front and rear assemblies releasably to the platform sites of Armstrong are not equivalent to a U-bolt attaching the front and rear assemblies of the invention in question releasably to a platform site. A bolt and a U-bolt are identical in function and result, and equivalent in structure, and thus meet all the limitations for substitution in a means plus function claim.

Applicant further argues that there is no front cargo rack at the front of the vehicle of Armstrong. There is a cargo rack A, which has the equivalent structure and function of the cargo rack disclosed by the applicant, at the front of the vehicle of Armstrong (figure 2).

Art Unit: 3782

Applicant further argues that the racks of Armstrong are attached separately to a vehicle, therefore they can not be combined with Oliver. Examiner notes that the racks taught by Oliver must be attached separately to a vehicle as well, therefore there is no logical foundation for this argument against the combination given in the rejection.

Applicant further argues that there is no cargo rack on the vehicle of Armstrong. There is a cargo rack A, which has the equivalent structure, results, and function of the cargo rack disclosed by the applicant, at the front of the vehicle of Armstrong (figure 2).

Applicant further argues that the short connection means 44 can not be a short connection means because it is a "sleeve". The short connection means 44 has the equivalent structure, results, and function of the short connection means of claim 20 and the short connection means described in the specification and drawings, and therefore meets all the limitations of the means plus function claim.

Applicant further argues that Armstrong can not be placed on an ATV because ATVs do not have side walls, and Armstrong must be supported by side walls. Perhaps the applicant is thinking of a different prior art reference, since figures 2 and 3 of Armstrong clearly show that it requires no support from the side walls of the vehicle. Applicant further argues, with no support, that the rack of Armstrong could not fold if placed on an ATV. It is not clear how placing the rack of Armstrong on an ATV would render it unable to fold, since the folding structure at 66/58 is entirely unaffected by the mounting bolts of the rack (figure 2, figure 3) on any horizontal surface.

Applicant further argues that the base of Armstrong does not extend along a width of the truck. Curiously, in the next sentence, Applicant describes the base bracket of Armstrong as extending along a width of the truck. It is clear from figures 2 and 3 of Armstrong that the base member extends along a width of the platform site at the truck bed.

Applicant further argues that Whiting does not teach gear attachments for the rack of Armstrong, since they are used to attach a boat or other elongate article in the disclosure of Whiting. A "boat" is an essential piece of "gear" for any boating expedition. There is no structure limiting the gear attachments taught by Whiting from attaching both a boat and a strap, or a tool, or a net, or any other piece of gear that the Applicant might have in mind, to a rack structure. Furthermore, it is clear that no dictionary defines "gear" as "not a boat, or any other elongate article". The gear attachments as taught by Whiting fulfill the structure and functional requirements of the claimed invention, in combination with the other cited references.

Finally, at several point in the arguments, the Applicant argues that the "omnibus" rejection of the method claims as cited are untenable. Each of the method claims has been fully examined. However, since the structure and functional requirements of the claimed invention has been rejected under the example of the prior art as combined and cited prior, and the method claims contain no language that renders the method of use of the rack invention in question any different than the method of use of the rack as described in the prior art and combinations of prior art, summary and concise rejection of the method claims is proper and warranted.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARGARET L. OLSON whose telephone number is (571)272-9002. The examiner can normally be reached on MTWR, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3782

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